

MANAGEMENT MEMO

NUMBER:

MM 03-10

SUBJECT:

REQUIREMENTS FOR THE USE OF CALIFORNIA MULTIPLE
AWARD SCHEDULES (CMAS), MASTER AGREEMENTS, AND
NON-COMPETITIVELY BID CONTRACTS

DATE ISSUED:

MAY 28, 2003

EXPIRES:

UNTIL RESCINDED

REFERENCES:

GOVERNOR'S TASK FORCE ON CONTRACTING AND
PROCUREMENT REVIEW REPORT, August 30, 2002
PCC 10295, PCC 12100, et seq.
RESCINDS AND SUPERSEDES MM 02-19 REVISION 3
AND ATTACHMENTS

ISSUING AGENCY:

DEPARTMENT OF
GENERAL SERVICES

It is the intent of the Department of General Services (DGS) to ensure that competitive bidding processes are employed to the maximum extent required by law. The purpose of this Management Memo is to provide requirements for the acquisition of information technology and non-information technology goods and services obtained through the use of CMAS, Master Agreements, and Non-Competitively Bid acquisition methods.

In accordance with the Governor's Task Force on Contracting and Procurement Review Report, DGS is developing formal delegated purchasing authority requirements for state departments' use of the CMAS/Master Agreements known as leveraged procurement agreements (LPA), including a requirement that departments formally request the authority to use the LPA's. Those requirements will become effective July, 2003. In the interim, all departments are hereby granted delegated purchasing authority to use the state's LPA's in accordance with the relevant agreement requirements (e.g., CMAS Agency Packet, Master Agreement User Guides) and within the parameters of this Management Memo. This authority is a continuation of the authority historically granted by DGS to all departments. All PCO's will be notified when the new requirements are released. DGS cautions departments to differentiate between delegated purchasing authority for the use of LPA's and delegated purchasing authority to conduct competitive procurements.

Separate standards and processes are required for contracts \$250,000 or less and those greater than \$250,000. These are delineated in Attachments A and B. Attachment A provides requirements for acquisitions from CMAS and Master Agreements, distinguishing between information technology (IT) acquisitions and non-information technology (non-IT) acquisitions, and is further categorized by dollar threshold. Attachment B provides requirements for Non-Competitively Bid (NCB) contracts, again distinguishing between IT and non-IT acquisitions and categorized by dollar threshold. Attachments C and D identify and provide further procedures for exempting contracts from the requirements of this Management Memo, subject to specific conditions. Attachment C exempts contracts by statute and Attachment D exempts contracts by policy. Attachment D also provides direction on how to amend a contract that was previously competitively bid. Any contracts issued pursuant to this Management Memo cannot exceed a department's purchasing authority. Contracts and contract amendments exceeding a department's purchasing authority must be issued/approved by the DGS.

1. As a result of the recommendations contained in the Governor's Task Force on Contracting and Procurement Review Report, each agency/department/commission/board shall designate and maintain a Procurement and Contracting Officer (PCO) as a single point of contact. The PCO will:
 - Be responsible for all procurement and contracting activities within the department.
 - Be the person the DGS will contact for participation in procurement and contracting activities.

- Fulfill the agency officer requirement identified in Public Contract Code (PCC) section 10333(a)(1) as well as section 10351(a)(1).
- Serve as the contract officer identified in the State Contracting Manual (SCM), section 9.02A.
- Approve the department's Request for Delegated Purchasing Authority (Request) prior to submission of the Request to the DGS, including requests for any outlying offices. (Outlying offices include, but are not limited to, correctional facilities, district agricultural associations, hospitals, developmental centers, field offices, and district offices.)
- Serve as department signatory on reports for purchasing program compliance reviews conducted by the DGS, including reports for any outlying offices.

The following information was required to be submitted by 1/31/03.

Name, Working Title, State Classification, Department
Street Address, including address, city, and zip code
Mailing Address, including address, city, and zip code; IMS Code
Phone Number, including area code; Fax Number, including area code
E-mail address

This information must be kept updated. Please submit changes to Cheri Shaw, Purchasing Authority Management Section, Procurement Division, at (916) 375-4350 or cheri.shaw@dgs.ca.gov.

2. Failure to comply with the procedures and requirements provided in this Management Memo **will** result in the loss of purchasing authority and/or contract approval exemptions.
3. Contracts shall not be executed, and/or work shall not be commenced until all of the approvals required by this Management Memo and Attachments have been obtained.
4. Contracts for services procured pursuant to Government Code Section 4525 et seq, are exempt from this Management Memo.
5. The departmental approval limit for Non-IT service contracts is \$50,000.00 unless DGS Office of Legal Services (OLS) has granted increased authority. Contracts exceeding these limits must be submitted to DGS-OLS for approval.
6. Application of the requirements of this Management Memo to Master agreements shall be as follows:
 - a. Master Agreements using a Pre-qualified list of suppliers: Competition must be achieved when awarding contracts to a pre-qualified list of suppliers. To ensure that competition is achieved to the fullest extent possible, pre-qualified bidders on the master agreement must have an opportunity to compete. Follow the applicable User Guide for each Master Agreement. The dollar limit for orders using information technology master agreements is \$500,000 unless prior approval has been granted from DGS-PD to exceed that amount. See Attachment A for requirements.

Amendments to contracts based on these Master Agreements are exempt from the Non-Competitively Bid Contract process of Attachment B, if the evaluation of the original Request for Offers evaluated options for changes to the Scope of Work, e.g., quantity or time, to be undertaken by the amendment.

- b. Master Agreements based on competition: Information on how to purchase from Master Agreements based on competition, such as the CAL-Store, the Master Rental Agreement, Western States Contracting Alliance (WSCA), etc., is published on the Procurement Division website. (See #11 below) Follow the applicable User Guide for each Master Agreement.

Amendments to contracts based on these Master agreements are exempt from the requirements of Attachment B and are not considered NCB contracts.

- c. Information on how to acquire goods through the State Price Schedules and Statewide Contracts is available on DGS-PD's website at: www.dgs.ca.gov/pd.

7. This Management Memo shall apply to amendments as follows:

- a. The requirements apply to amendments of existing non-competitively bid contracts based on the cumulative dollar value after including the amendment.
- b. The requirements apply to amendments to a previously competitively bid contract when the originally awarded contract is to be amended to increase the monetary value of the contract and such increase was not considered during the original evaluation process.

Amendments in a. and b. above shall be based on the cumulative value after including the amendment (e.g., a \$200,000 contract plus a \$60,000 amendment shall be considered a \$260,000 contract, and shall be subject to the requirements accordingly).

Amendments in a. and b. above may be executed for incidental omissions such as: transposition of numbers from the solicitation bid response to the purchase order, or for inadvertent failures to include such things as contact names or for mistyped addresses. This does not apply to changes in quantity or time, see Attachments A and B.

- 8. Acquisitions and contracts not addressed by this Management Memo are subject to the DGS' oversight and must be processed in accordance with existing statutory requirements as well as applicable Procurement Division Delegated Purchasing Authority requirements and/or the State Contracting Manual.
- 9. Order of precedence: In applying these Management Memo requirements, the precedence shall be applied in the following order:
 - a. Management Memo 03-10
 - b. Procurement Division Delegated Purchasing Authority Manual (a.k.a. Delegation Guidelines) for information technology (IT) goods and services and non-IT goods; State Contracting Manual for Non-IT services.

Copies of these documents are available on either the Procurement Division website at: www.dgs.ca.gov/pd or the Office of Legal Services website at: www.ols.dgs.ca.gov .

- 10. The requirements provided in this Management Memo are subject to future revision as determined by DGS.

11. Additional information regarding this Management Memo will be published on the Procurement Division website (www.dgs.ca.gov/pd) as it becomes available. Of particular interest will be the FAQ (Frequently Asked Questions) section, which will address common inquiries regarding the application of the procurement requirements addressed herein.
12. Although all Constitutional Officers, the University of California, the California State University, the Lottery Commission, the Public Employees' Retirement System, the State Teachers' Retirement System, the State Compensation Insurance Fund, and other independent state entities are exempt from this Management Memo, they are encouraged to take all necessary actions to comply with the intent of this Management Memo. This Management Memo does not cover contracts by local government entities.

Questions regarding this Management Memo may be directed to:

IT Goods & Services, Non-IT Goods:

Glenn Ford
Customer Relations Management
Department of General Services
Procurement Division
Telephone: (916) 375-4566
e-mail: glenn.ford@dgs.ca.gov

Non-IT Services:

Kathleen A. Yates, Senior Staff Counsel
Department of General Services
Office of Legal Services
Telephone: (916) 376-5115
e-mail: kathleen.yates@dgs.ca.gov

Questions related to **status** of Non-Competitive Bid (NCB) documents may be directed to:

Sallianne Salinas
Technology Acquisitions
Department of General Services
Procurement Division
Telephone: (916) 375-4486
e-mail: sallianne.salinas@dgs.ca.gov



J. Clark Kelso, Interim Director
Department of General Services

Attachments

Dollar Thresholds -- What To Do – Attachment A-1

CMAS and Master Agreements

	IT Goods and Services*
Amendments	Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment. Amendments must be compliance with this MM 03-10 paragraph 7.
Over \$ 500,000.00 Master Agreements ONLY	<ol style="list-style-type: none"> 1. Obtain approval of DGS-PD to exceed the \$500,000.00 ordering limit; request must include at a minimum the following: project description, dollar value of the request, evaluation criteria to be used. All Requests for Offer (RFO) that exceed \$500,000.00 must be reviewed and approved by DGS-PD prior to release of the RFO. Prior to contract award, an Evaluation and Selection Report (E&SR) must be submitted to DGS-PD for concurrence with the intended awardee. Additional measures may be required by DGS. Submit all requests for exemption and requests for examples of E&SR's to DGS-PD, Technology Acquisitions Section 2. All qualified suppliers must be contacted, unless otherwise specified in the applicable User Guide. 3. All orders must be reported to DGS within 5 working days of award using the Notice of Contract Award form.
\$ 500,000.00 and under	Orders may not exceed \$500,000.00 unless an exemption is granted as provided above. Exemptions to the CMAS dollar limit are not allowed.
Over \$250,000.00	<ol style="list-style-type: none"> 1. Same instructions as in item 1 of "\$5,000.00 to \$250,000.00". 2. All orders must be reported to DGS within 5 working days of award using the Notice of Contract Award form. If only 1 offer is received, documentation required in item 1 of "\$5,000.00 to \$250,000.00" must be included with the Notice of Contract Award. 3. No variance of model contract terms is allowed. 4. Approval by Agency Secretary and Department Director or immediate next ranking official is required. Approval must be contained on the purchase order or contracting vehicle; the location on the ordering document for the signatures is up to each individual ordering entity.
\$5,000.00 to \$250,000.00	<ol style="list-style-type: none"> 1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-1) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements. 2. No variance of model contract terms is allowed. 3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo.
Under \$5,000.00	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000 to \$250,000.00" apply, except for best value determination.

*Best value criteria must be determined prior to solicitation of offers.

Dollar Thresholds -- What To Do – Attachment A-2

CMAS and Master Agreements

	Non-IT Services*
Amendments	Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed \$250,000. The original contract must have permitted amendments. Outside of these conditions, the NCB process must be followed. Amendments must be compliance with this MM 03-10 paragraph 7.
\$5,000.00 to \$250,000.00	<ol style="list-style-type: none"> 1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-2) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements. 2. No variance of model contract terms is allowed. 3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo. 4. CMAS and Master Agreement orders for non-IT services may not exceed \$250,000.00.
Over \$50,000.00	<ol style="list-style-type: none"> 1. CMAS orders, DGS-PD review and approval required. 2. Master Agreements, DGS-OLS review and approval required.
Under \$5,000.00	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000.00 to \$250,000.00" apply.

***Best value criteria must be determined prior to solicitation of offers.**

Dollar Thresholds -- What To Do – Attachment A-3

CMAS and Master Agreements

	Non-IT Goods*
Amendments	Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment. Amendments must be compliance with this MM 03-10 paragraph 7.
\$5,000.00 to \$100,000.00	<ol style="list-style-type: none">1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-3) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements.2. No variance of model contract terms is allowed.3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo.4. CMAS and Master Agreement orders for non-IT goods may not exceed \$100,000.00.
Under \$5,000.00	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000.00 to \$100,000" apply, except for best value determination.

***Best value criteria must be determined prior to solicitation of offers.**

Dollar Thresholds -- What To Do – Attachment B-1

Non-Competitively Bid (NCB) Contracts

	IT Goods and Services
Amendments	Amendments to contracts must be in compliance with this MM 03-10 paragraph 7 and Attachment D, paragraph 7 a.
SPECIAL CATEGORY NCB All \$\$ levels Pre-Approval by Category/Type	<p>1) Only source (PCC 12102(a)(1))</p> <p>2) Emergency (PCC 12102(a)(2))</p> <ol style="list-style-type: none"> See Attachment D, paragraph 11. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at www.dgs.ca.gov/pd). DGS must execute all contracts for approved SCR's for departments without delegated purchasing authority and for transactions exceeding a department's delegated purchasing authority. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) for IT goods and on a memo for IT services and must include the approved SCR number.
Emergency contracts All \$\$ levels	<p>1) Emergency (PCC 12102(a)(2))</p> <p>Departments may contract for emergencies regardless of dollar limits. Departments must obtain prior approval via the Form 42 process except for natural disasters- contact DGS-PD. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5, working days. All NCA's must include a justification describing the nature of the emergency.</p>
\$25,000.01 and above	<p>1) Only source (PCC 12102(a)(1))</p> <ol style="list-style-type: none"> Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Approval by DGS-PD is required. Departments with delegated authority will submit NCB's \$25,000.01 and above to DGS-PD for approval. DGS-PD will return approved NCB's to departments for execution of contracts. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for IT goods and services within 5 days of award of the contract. If the contract exceeds delegated purchasing authority, the contract must be approved and issued by DGS-PD. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) for IT goods and on a memo for IT services and must include the approved NCB contract justification and, for services, must include an Exemption from Advertising (Std. 821).
\$5,000.00 to \$25,000.00	<p>1) Only source (PCC 12102(a)(1))</p> <p>When only one source is known, an NCB is required. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Departments with delegated purchasing authority do not need DGS approval up to this limit, however the approved NCB contract justification must be maintained in the transaction file.</p>
Under \$5,000.00	<p>1) Only source (PCC 12102(a)(1))</p> <p>No NCB justification is required if fair and reasonable pricing has been established and documented. If fair and reasonable pricing cannot be established and documented or two bids cannot be obtained, an NCB justification is required (see \$5,000 to \$25,000). Departments without IT delegated purchasing authority must submit a procurement request to PD and attach an approved NCB contract justification.</p>

*Non-Competitively Bid Contracts (NCB's) over \$500,000 may reference CMAS/Master terms and conditions but can only be awarded by DGS.

Dollar Thresholds -- What To Do -- Attachment B-2

Non-Competitively Bid (NCB) Contracts

	Non-IT Services
Amendments	Amendments to contracts must be in compliance with MM 03-10 paragraph 7.a. and Attachment D, paragraph 7.b.
SPECIAL CATEGORY NCB All \$\$ levels Pre-Approval by Category/Type	1) PCC 10340 Only source or DGS Director determines compliance with the state's best interest 1. See Attachment D, paragraph 11. 2. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at www.dgs.ca.gov/pd).
Emergency contracts All \$\$ levels	1) PCC 10340 Departments may contract for emergencies regardless of dollar limits. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5 working days.
\$5,000.00 and above	1) PCC 10340 Only source or DGS Director determines compliance with the state's best interest Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. All Non-Competitively Bid Contract requests must be submitted to DGS-PD for approval. Attach a Std. 821.
Under \$5,000.00	1) GC 14838.5 DGS approval not required. However, fair and reasonable pricing must be established and documented. If fair and reasonable cannot be established and documented, an NCB is required and the signed form must be maintained in the transaction files for documentation purposes

Note: NCB's for non-IT services do not require submission of a Notice of Contract Award, except for emergencies.

Dollar Thresholds -- What To Do – Attachment B-3

Non-Competitively Bid (NCB) Contracts

	Non-IT Goods
Amendments	Amendments to contracts must be in compliance with this MM 03-10 paragraph 7.a. and Attachment D, paragraph 7. a.
SPECIAL CATEGORY NCB All \$\$ levels** Pre-Approval by Category/Type	<ol style="list-style-type: none"> 1) Only source (PCC 10301) 2) Emergency (PCC 10302) <ol style="list-style-type: none"> 1. See Attachment D, paragraph 11. 2. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at www.dgs.ca.gov/pd). 3. DGS must execute all contracts for approved SCR's for departments without delegated purchasing authority and for transactions exceeding a department's delegated purchasing authority. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) and must include the approved SCR number.
Emergency contracts All \$\$ levels	<ol style="list-style-type: none"> 1) Emergency (PCC 10302) <p>Departments may contract for emergencies regardless of dollar limits. Departments must obtain prior approval via the Form 42 process except for natural disasters- contact DGS-PD. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5, working days. All NCA's must include a justification describing the nature of the emergency.</p>
\$25,000.01 and above	<ol style="list-style-type: none"> 1) Only source (PCC 10301) <ol style="list-style-type: none"> 1. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Approval by DGS-PD is required. 2. Departments with delegated authority over \$25,000 will submit NCB's \$25,000.01 and above to DGS-PD for approval. DGS-PD will return approved NCB's to departments for execution of contracts. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for IT goods and services within 5 days of award of the contract. 3. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for non-IT goods within 5 days of award of the contract. 4. If the contract exceeds delegated purchasing authority, the contract must be approved and issued by DGS-PD. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) and must include the approved NCB contract justification.
\$5,000.00 ** to \$25,000.00	<ol style="list-style-type: none"> 1) Only source (PCC 10301) <p>When only one source is known, an NCB is required. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. . Departments with delegated purchasing authority do not need DGS approval up to this limit, however the approved NCB contract justification must be maintained in the transaction file.</p>
Under \$5,000.00**	<ol style="list-style-type: none"> 1) Only source (PCC 10301) <p>No NCB justification is required if fair and reasonable pricing has been established and documented. If fair and reasonable pricing cannot be established and documented or two bids cannot be obtained, an NCB justification is required (see \$5,000 to \$25,000). All departments have purchasing authority up to \$100, however departments without goods delegated purchasing authority must submit a procurement request (Purchase Estimate, Std. 66) to DGS-PD and attach an approved NCB contract justification for NCB's above \$100.</p>

*Non-Competitively Bid Contracts (NCB's) over \$500,000 may reference CMAS/Master terms and conditions but can only be awarded by DGS.

Attachment C Management Memo 03-10

Contracts Exempt by Statute

The following contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. These categories are exempt by statute (many of these were formerly referenced in State Administrative Manual Section 1233 and State Contracting Manual Section 5.80). However, the dollar limits of contracting and delegated purchasing authority still apply. Therefore, contracts exceeding your approval authority must still be submitted for DGS approval and acquisition transactions exceeding your delegated purchasing authority are required to be awarded by DGS.

1. Emergency contracts, which are necessary for the immediate preservation of life or state property, are exempt from the Non-Competitive Bid Contract (NCB) justification process. Contracts issued as a result of an emergency may be entered into immediately. However, such contracts are subject to otherwise applicable statutory approval requirements and the reporting requirements of this Management Memo. For the purpose of this paragraph, reporting consists of submission of an approved copy of the Notice of Contract Award (NCA).
2. Contracts for the work or services of a state, local or federal agency, the University of California, the California State University, a California community college, a foundation or auxiliary organization incorporated to support the universities and colleges, or a Joint Powers Agency. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by this Management Memo or the attachments thereto.
3. Goods and services for which the state has entered into a Master Agreement. Note: This is limited to those Master Agreements which have been competitively bid or which have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the goods/services offered. See the DGS Procurement web page at www.dgs.ca.gov/pd for Statewide Checklist. If a contract is exempt it is denoted by a "Yes" in the column titled "Exempt".
4. Subvention contracts (non-discretionary grants) with a private or nonprofit entity or local agency for the purpose of providing services to the public or segments thereof. This exception applies only when services are being provided to the public and not specifically to a state agency. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed this Management Memo or the attachments thereto.

Attachment C

Management Memo 03-10

5. Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services.
Note: This exception applies only in circumstances where services to be provided are less than \$250,000.00; for services in excess of this amount, the requirements regarding non-competitively bid contracts for \$250,000.00 or more apply.
6. Proprietary software, proprietary software maintenance and/or upgrade contracts. Documentation supporting the non-competitive status of the contract (e.g. a letter from the software publisher and/or manufacturer that states maintenance or purchase is not available from any other source) must be on file either at: 1) the department if the service or purchase is being acquired through the delegated purchasing authority; or 2) at the DGS, if DGS is the approving authority. (Note: DGS-PD will be the repository for all of the software publisher/manufacturer letters when DGS is the approving authority.) It will always be the user department's responsibility to both obtain and provide such documentation to DGS.
 - a.1. Acquisition of existing proprietary software maintenance and/or upgrade renewal contracts.
 - No NCB justification is required.
 - Departments with delegated purchasing authority may award contracts within the department's authority limits. Transactions that are not within the department's authority limits must be submitted to DGS-PD on a Purchase Estimate (Std. 66) for PD to conduct the procurement and execute the contract. See paragraph 2 on page 1 of this Management Memo, specifically the last sentence.
 - Departments without delegated purchasing authority must submit all transactions to DGS-PD on a Purchase Estimate (Std. 66) for PD to conduct the procurement and execute the contract.
(Note: File documentation must include the documents described in paragraph 6, or other appropriate documents to justify why the transaction is exempt, and reference this exempt category)
 - a.2. Acquisition of new proprietary software, which may also include maintenance.
 - No NCB justification is required for transactions \$250,000 and under. An NCB justification must be submitted to and approved by DGS-PD for transactions that exceed \$250,000.

Attachment C

Management Memo 03-10

- **Departments with delegated purchasing authority may award contracts within the department's authority limits. An approved NCB justification must be included in the department's file documentation for transactions that exceed \$250,000. Transactions that are not within the department's authority limits must be submitted to DGS-PD on a Purchase Estimate (Std. 66) for DGS-PD to conduct the procurement and execute the contract. See paragraph 2 on page 1 of this Management Memo, specifically the last sentence. Transactions submitted to DGS-PD that exceed \$250,000 must include an NCB justification approved by the department's director and agency secretary or next highest ranking official.**
 - **Departments without delegated purchasing authority must submit all transactions to DGS-PD on a Purchase Estimate (Std. 66) for PD to conduct the procurement and execute the contract. Transactions submitted to DGS-PD that exceed \$250,000 must include an NCB justification approved by the department's director and agency secretary or next highest ranking official.**
(Note: File documentation must include the documents described in paragraph 6, or other appropriate documents to justify why the transaction is exempt, and reference this exempt category.)
- a.3. Approval by the agency secretary and the department director (or next ranking official) must be secured on the purchase document (Std. 65 or Std. 213) for any transaction that exceeds \$250,000 prior to award of contracts in paragraphs a.1. or a.2. above .**
- 7. Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered. Note: Shall not exceed \$5,000.**
- 8. Contracts solely for the purpose of obtaining expert witnesses for litigation. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by this Management Memo or the attachments thereto.**
- 9. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by this Management Memo or the attachments thereto.**
- 10. Contracts for which services are specifically exempt by statute from the competitive bidding process. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by this Management Memo or the attachments thereto.**

Attachment D Management Memo 03-10

Contracts Exempt by Policy

The following categories of contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. These categories are exempt based on a determination by DGS that competitive bidding is not feasible (many of these were formerly referenced in State Administrative Manual Section 1233 and State Contracting Manual Section 5.80). However, the dollar limits of contracting and delegated purchasing authority still apply. Therefore, contracts exceeding a department's approval authority must be submitted to DGS for approval and acquisition transactions exceeding delegated purchasing authority are required to be awarded by DGS.

1. Refuse and/or sewage disposal contracts where there is no competition because there is a single authorized franchise dealers providing services to a specific geographical area.
2. Medical care services with physicians, local community hospitals, medical groups (related offsite laboratory services are not included), 911 emergency ambulance service calls and ambulance service calls where there is a single provider serving a geographical area.
3. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety.
4. Public entertainment contracts for state-sponsored fairs and expositions.
5. Contracts with business entities operating Community Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to Government Code 19130(a).
6. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new contract can be executed, but in no case shall this exemption extend beyond six months for a particular amendment.

Attachment D
Management Memo 03-10

7. Amendments to existing contracts which were originally competitively bid subject to the following restrictions:
- a) Competitively bid contracts for both information technology goods and services and non-information technology goods, and which included options for changes (e.g., quantity or time) may be amended consistent with the terms of the original contract providing for such extension(s) if such options were evaluated during the solicitation process.
 - b) Competitively bid contracts for non-information technology services which do not include options to extend may be amended as follows:
 - Exemption shall only apply to the first amendment;
 - Amendment shall add time only, not to exceed one year, or add not more than 30% of the original contract value, not to exceed \$250,000;
 - The original contract must have permitted the amendment.
8. Contracts for conference or meeting facilities, including room accommodations for conference attendees. Note: This exception applies only in circumstances where facilities to be provided are less than \$250,000; for facilities exceeding this amount, the requirements regarding non-competitive bid contracts for \$250,000 or more apply.
9. Contracts for services under the Health Insurance Portability and Accountability Act (HIPAA) MSA shall be exempt from compliance with the restrictions imposed by the Executive Order and Management Memo subject to compliance with the following requirements and limitations:
- Agencies must prepare their Statement of Work (SOW).
 - Office of HIPAA Implementation (OHI) reviews and approves all SOWs to ensure the agency complied with their HIPAA work plan.
 - For contracts less than \$500,000, agencies must obtain a minimum of three (3) written offers, including one from a small business/DVBE if available, from the HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state.
 - For contracts greater than \$500,000, agencies must obtain a minimum of six (6) written offers, including one from a small business/DVBE if available, from the HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state. If six (6) written offers cannot be obtained, the file must be documented with the reasons why suppliers did not respond. The file must contain responses and offers to equal six (6) contacts.
 - Contracts/amendments providing for a contract value greater than \$50,000 for non-IT services are subject to review and approval by DGS.

Attachment D
Management Memo 03-10

- **Contracts/amendments providing for a contract value between \$500,000 and \$5 million for non-IT services are reviewed by OHI and approved by DGS.**
 - **Contracts/amendments providing for a contract value between \$500,000 and \$5 million for IT services are reviewed by OHI and approved by DGS.**
 - **Contracts/amendments providing for a contract value greater than \$5 million are reviewed by OHI and DGS and approved by the Department of Finance.**
- 10. Amendments to the California Integrated Information Network (CIIN) Agreement (CNT-001) to add products and services defined as mandatory per Management Memo 97-01 and DOIT Directive 1999-01. These mandatory services are defined as Lineside, Voice Network, Data Services, and Billing Services.**
- 11. Categories of contracts for the purchase of goods or services necessary to achieve program objectives in a timely manner, where the Department of General Services has determined in advance, in writing, that for a specific type of category of goods or services there is no viable competition, or that due to critical time requirements such competition cannot be completed by the exercise of reasonable efforts prior to the time such goods or services are required. Any individual order placed against a specified contract pursuant to this exemption that exceeds \$250,000 shall also require the approval of the Department of General Services. Special Category NCB Requests must be approved by the Department's Director and Agency Secretary or immediate next ranking official prior to obtaining DGS approval. Transactions placed against the approved Special Category NCB do not require these signatures. See the website www.dgs.ca.gov/pd for the form and instructions.**
- 12. Proprietary pharmaceuticals and proprietary vaccines for which there are no generic equivalents and for which the Department of General Services will enter into contracts/price agreements with either the manufacturer or distributor. This commodity will be for the proprietary pharmaceuticals, proprietary vaccines purchased for public health programs by the Department of Health Services, Proprietary Vaccines used by state, local and public agency governmental entities, federal contracts as described in the 1990 Sharing Act, Botulism Immune Globulin Program, and pharmaceuticals outlined in Government Code, Chapter 12 (commencing with Section 14977) to Division 3 of Title 2. There will be no dollar limit on these acquisitions; master agreements will be established only by the Department of General Services for purchasing by state and local entities.**
- 13. Proprietary subscriptions, proprietary publications and/or technical manuals (manuals, law books, technical manuals, technical services related to publications, etc.) regardless of media format, up to \$250,000.**

Attachment D
Management Memo 03-10

14. Rental of proprietary postage meters are exempt if they are interfaced and intermembered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area.

This exemption applies only in circumstances where annual postage meter rental services to be provided are less than \$100,000.

Rental service agreements for stand-alone proprietary postage meters, which are not interfaced, or intermembered with mailing equipment must be competitively bid.

Miscellaneous:

In determining whether the acquisitions of a particular state agency is exempt from this Management Memo, the funding source for the acquisition shall be determinative, notwithstanding the fact that DGS may be the procuring entity.